



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

December 5, 1961

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-1208

Re: Proper method for
assessing value of
shares of bank stock
for ad valorem tax
purposes in view of
Attorney General
Opinions Nos. V-315
and WW-439.

Dear Mr. Calvert:

In your letter requesting our opinion on the above captioned matter, you state:

"It has been the long standing practice of the Tax Assessor-Collectors in the State of Texas to assess the shares of stock of a bank as the par value of capital stock, plus the surplus and undivided profit, less the assessed value of real estate. Attorney General opinion No. WW-439 says that the method for assessing such stock is based upon the actual cash value of the stock less the value of the proportionate amount per share of the real estate owned by the bank."

You further state that in connection with this question you are having difficulty in reconciling Attorney General Opinions Nos. V-315 and WW-439.

In Opinion No. V-315, the state banking corporation in question had been granted its charter in September 1946. The Banking Commission's permit gave January 2, 1947, as the opening date of the bank, which did in fact open on that date. The capital stock had been subscribed to by the stockholders prior to January 1, 1947, and the bank's capital as well as surplus and undivided profits was set up prior to January 1, 1947. A certain portion of the undivided profits had been used for the purpose of furniture and fixtures for the bank. The bank did not own any real estate. The precise question presented for consideration was:

"In view of the fact that the capital, surplus and undivided profits were in being prior to January 1, 1947 and some of the monies and the profits were used prior to January 1, 1947, is this capital the surplus and undivided profits taxable property for the year 1947 even though the State Banking Commission's permit gives the opening date as January 2, 1947 and the bank in fact started operating as a bank as of January 2, 1947?"

The specific answer to this question and, therefore, the specific holding of Opinion No. V-315 is contained in the following paragraph:

"These bank shares under the express provisions of Article 7145, V.C.S., above quoted are subject to taxation. They are 'property; real, personal or mixed.' They were in existence on January 1st and the fact that the bank itself did not open its doors for business until January 2 is immaterial."

It is true that the Opinion states that the "...value of the capital, surplus and undivided profits (being personal property) is used as a basis for determining the value of the shares for taxation purposes." However, this statement was not necessary to a determination of the question under consideration and is therefore not a part of the specific holding of Opinion No. V-315. In view of the facts which were presented in connection with the opinion request, that method of valuation would probably have been the correct method of valuation in that particular case.

We agree with the following statement contained in Attorney General's Opinion No. 0-5258:

"Although the aggregate 'actual cash value' of the shares of a bank normally is based upon the value of its franchise, capital, and property of all kinds, less the amount of its debts, *Rosenberg v. Weekes*, 67 Tex. 578, 584, 4 S.W. 899, 'it is proper for the assessor or the board to consider all elements which tend to compose or augment the value of the stock in the hands of the individual stockholder.' 6 Tex.Jur., p. 348. From the value thus

obtained is to be deducted the proportionate amount per share at which the real estate of the bank is assessed. See our Opinions Nos. O-2406, O-3563 and O-1214, enclosed herewith, for different applications of this formula. The obvious purpose of the formula was to obtain the value of all assets of the bank, except real estate, and to tax such assets proportionately against the shareholders."

In other words, we are of the opinion, as was held in Attorney General's Opinion No. O-4869, that there is no exclusive method for determining the fair cash market value of shares of bank stock. Generally speaking, we reaffirm the holding of WW-439 ". . . that such stock value would be the value of the stock rather than the value that would be obtained by adding the value of the capital stock, the amount of surplus, undivided profits or reserve funds and dividing this by the number of shares of stock." But this is not to say that the latter method of valuation could never result in a determination of the actual cash value of the stock. As stated in Opinion No. O-4869:

" . . . any method reasonably calculated to reach a correct conclusion as to value is sufficient for the taxing authorities. The laws of this state place the duty of determining the value of such stock within the discretion of the local assessing authorities. The Legislature has vested in boards of equalization, as constituted by statute, the sole discretion in the valuation and the equalization of values of property subject to ad valorem taxation. Their action is clothed with the presumption that it has been rightfully made on the basis of actual value and the courts will decline to disturb such assessments unless shown to be arbitrary and grossly excessive or fraudulent or based upon a fundamentally wrong principle or method. 40 Tex.Jur. 158. Further than this the courts have not gone nor can this department in stating the rule."

S U M M A R Y

The value of shares of bank stock for ad valorem tax purposes should be

based upon the actual cash value of the stock less the value of the proportionate amount per share of the real estate owned by the bank. Depending upon the facts of each case, this actual cash value may or may not be obtained by adding the value of the capital stock, the amount of surplus, undivided profits or reserve funds and dividing this amount by the number of shares of stock.

Yours very truly,

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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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